

In the Matter of HOOSIER DESK COMPANY and UNITED FURNITURE
WORKERS OF AMERICA, LOCAL #331, C. I. O.

Case No. 11-R-902.—Decided February 4, 1946

Kahn, Little, Dees & Kahn, by *Messrs. Isidor Kahn and Harry P. Dees*, of Evansville, Ind., for the Company.

Mr. Frank Douthitt, of Bloomington, Ind., and *Mr. Anton H. Bettag*, of Jasper, Ind., for the C. I. O.

Mr. James Zett, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon petition duly filed by United Furniture Workers of America, Local #331, C. I. O., herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Hoosier Desk Company, Jasper, Indiana, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Clifford L. Hardy, Trial Examiner. The hearing was held at Jasper, Indiana, on November 21, 1945. The Company and the Union appeared and participated. All parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. The Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed. All parties were afforded opportunity to file briefs with the Board.

Upon the entire record in the case, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Hoosier Desk Company, an Indiana corporation, is engaged in the manufacture of desks and chairs at its only plant in Jasper, Indiana. During the past 12-month period the Company has used raw materials valued in excess of \$50,000, consisting principally of lumber, panels, hardware, and finishing material, over 50 percent of which was

shipped to the Company from points outside the State of Indiana. During the same 12-month period the Company's finished products were valued in excess of \$50,000, of which over 50 percent was shipped to points outside the State of Indiana.

We find that the Company is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATION INVOLVED

United Furniture Workers of America, Local #331, is a labor organization, affiliated with the Congress of Industrial Organizations, admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

The Union requested recognition from the Company by letter dated October 18, 1945. The Company responded, by letter dated October 20, 1945, refusing such recognition to the Union as the exclusive bargaining representative of the Company's production and maintenance employees until the Union has been certified by the Board in an appropriate unit.

A statement of a Board agent, introduced into evidence at the hearing, indicates that the Union represents a substantial number of employees in the unit hereinafter found appropriate.¹

We find that a question affecting commerce has arisen concerning the representation of employees of the Company, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the Act.

IV. THE APPROPRIATE UNIT

We find, in substantial agreement with the position taken by the parties at the hearing, that all production and maintenance employees at the Company's Jasper, Indiana, plant, excluding office clerical

¹ The Field Examiner reported that the Union submitted 47 membership cards. Of these cards, 45 were dated from April to October, 1945, and 2 were undated. The Trial Examiner checked the names against a current pay roll and found that 46 names were listed on the pay roll. There are approximately 109 employees in the unit.

The Company objected to the admission in evidence of the Report on Investigation of Interest of Contending Labor Organizations on the grounds that it is *ex parte*, self-serving document. The Trial Examiner overruled this objection and his ruling is hereby upheld. The Board requires a petitioning union to submit *prima facie* evidence of representation among the employees in the appropriate unit for the sole purpose of determining whether the petitioner has sufficient interest to justify setting in motion the Board's investigatory machinery. The acceptance of such evidence in no way prejudices the Company's legal rights and the Board does not permit an opposing party to question the evidential showing made by the petitioner at any stage of the proceeding. We are of the opinion that the C. I. O. had a sufficient interest at the time it filed its petition to warrant our determination hereinafter that a question concerning representation has arisen. See *Matter of Tampa Shipbuilding Company, Inc.*, 62 N. L. R. B. 954, *Matter of Sunset Motor Lines*, 59 N. L. R. B. 1434, *Matter of Champion Sheet Metal Company, Inc.*, 61 N. L. R. B. 511.

employees, foremen, working foremen,² and all other supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

V. THE DETERMINATION OF REPRESENTATIVES

The Company has one part-time superannuated employee, a pensioner under the Social Security Act, who works not more than the first three Fridays of each month to earn the maximum of \$15 allowed under that Act without a consequent loss of pension. We find that this employee has not a sufficient interest in the selection of a collective bargaining representative to entitle him to vote in the election.³

The Company requests that, in view of the termination of the war, its employees in the armed forces be allowed the opportunity to cast ballots by mail in any election ordered by the Board. The facts in the instant case are substantially the same as those in *Southwest Pennsylvania Pipe Lines*,⁴ and we will order the mail balloting of the Company's employees in the armed forces who fall within the appropriate unit, subject to the limitations hereinafter mentioned.⁵

We shall direct that the question concerning representation which has arisen be resolved by an election by secret ballot among employees in the appropriate unit who were employed during the pay-roll period immediately preceding the date of the Direction of Election herein, subject to the limitations and additions set forth in the Direction. The Regional Director shall mail ballots to employees within the appropriate unit on military leave, provided one or more of the parties hereto, within seven (7) days from the issuance of the Direction of Election, files with the Regional Director a list containing the names, most recent addresses, and work classifications of such employees.

² The record does not support the Union's contention that the shipping clerk and straw bosses are supervisory employees within the Board's customary definition, and we shall accordingly include them.

³ *Standard Gage Co., Inc.*, 62 N. L. R. B. 134; *The J. S. Young Company*, 55 N. L. R. B. 1174.

⁴ 64 N. L. R. B. 1384. It appears from the record of the instant proceeding that the normal peacetime complement of the Company averages 145 to 150 employees. At the present time there are 109 employees in the unit petitioned for. The Company does not anticipate the necessity of hiring anyone without reemployment rights, and is consciously striving to reserve places for its 48 employees in the armed forces. The Company offered at the trial to supply the Board with a list of such employees and their addresses which it claimed to have on record. See also *Food Machinery Corporation, Sprague-Sells Division*, 64 N. L. R. B. 1405; *Erving Paper Mills*, 64 N. L. R. B. 1509; *Mayfair Cotton Mills*, 65 N. L. R. B. 511.

⁵ The Union does not object to such mail ballot so long as it does not unduly delay the election and if conditioned upon such employees' stipulating an intention to return to the employ of the Company. The Union's request for such a stipulation conflicts with the Selective Training and Service Act, U. S. C. A., Title 50, Appendix Section 308, b, 3 and Section 357, which guarantee a veteran's reemployment rights for 90 days following discharge or separation from the service. The casting of mail ballots will therefore not be conditioned per request of Union.

The Regional Director shall open and count such ballots cast by mail by employees on military leave, *provided* such ballots are returned to and received by the Regional Director within thirty (30) days from the date they were mailed to such employees from the Regional Director.⁶

DIRECTION OF ELECTION

By virtue of and pursuant to the power vested in the National Labor Relations Board by Section 9 (c) of the National Labor Relations Act, and pursuant to Article III, Section 9, of National Labor Relations Board Rules and Regulations—Series 3, as amended, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Hoosier Desk Company, Jasper, Indiana, an election by secret ballot shall be conducted as early as possible, but not later than forty-five (45) days from the date of this Direction, under the direction and supervision of the Regional Director for the Eleventh Region, acting in this matter as agent for the National Labor Relations Board, and subject to Article III, Sections 10 and 11, of said Rules and Regulations, among the employees in the unit found appropriate in Section IV, above, who were employed during the pay-roll period immediately preceding the date of this Direction, including employees who did not work during said pay-roll period because they were ill or on vacation or temporarily laid off, and including employees in the armed forces of the United States, but excluding those employees who have since quit or been discharged for cause and have not been rehired or reinstated prior to the date of the election, to determine whether or not they desire to be represented by United Furniture Workers of America, Local #331, C. I. O., for the purposes of collective bargaining.

⁶ A free interchange between the interested parties of information on the addresses and work categories of the employees to be voted by mail will be necessary in order to avoid challenges and post-election objections. Accordingly, the Board will make available to all interested parties any information of this nature furnished it by any other party. In the event that the parties should send the absentee voters information or literature bearing directly or indirectly on the pending election, copies of all such documents should be simultaneously filed with the Regional Office for inspection by or transmittal to the other parties. However, acceptance or transmittal of such literature by the Board's offices is not to be construed as conferring immunity on the filing party in the event that objections are later interposed concerning its contents. The usual principles will apply.